S.B.Civil (Sales Tax) Revision No.272/2007

Asstt. Commercial Taxes Officer, Udaipur
vs
M/s. Narsing Trading Company, Jaipur
and

S.B.Civil (Sales Tax) Revision No.273/2007

Commercial Taxe Check Post, Ratanpur
vs
M/s. Perfect Thread Mills Ltd., Udapur

Date of order : 27.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr. VK Mathur]
Mr. Rishabh Sancheti], for the petitioner.

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REPORTABLE

Heard learned counsel for the petitioner.

These two revisions petitions are decided by this common judgment as common question of law has been raised and for deciding the controversy, the facts of SB Civil (Sales Tax) Revision No.272/2007 are taken.

A case was registered against the driver of the vehicle as he was not carrying relevant declaration ST18A with him while carrying the goods in his vehicle no.GJ9/V1285. The assessing authority found the owner of the vehicle liable to pay Rs.98,863/- as penalty under Section 78(5) for violation of Section

78(2) of the Act of 1994. In these proceedings, the owner of the goods himself appeared and was given opportunity of hearing as could have been granted under sub-section (6) of Section 78 of the Act of 1994. The penalty was imposed not only against the driver of the vehicle but against the owner of the vehicle by the assessing authority vide order dated 15th June, 2000.

Being aggrieved against the order of the assessing authority dated 15th June, 2000, the owner of the vehicle preferred appeal before the Dy. Commissioner (Appeals), Commercial Taxes, Jaipur. The appellate authority allowed the appeal and vide order dated 10.1.2005 held that since the matter was governed by the law as it was in existence before 22nd March, 2002, therefore, in view of the various earlier judgments, the penalty could not have been imposed against the owner of the goods found carried in the vehicle and penalty could have been only against the driver of the vehicle. The revenue preferred appeal before the Rajasthan Tax Board, Ajmer which was registered as Appeal No.3608/2005/Jaipur. The Tax Board also took the same view as taken by the appellate authority and held that no penalty could have been imposed against the owner of the vehicle as prior to 22nd March,

2002, the owner was not covered under sub-section (5) of the Act of 1994. The Rajasthan Tax Board consequently dismissed the appeal of the revenue, hence, this revision petition.

Learned counsel for the petitioner vehemently submitted that the sub-section (6) of Section 78 of the Act of 1994 clearly provides that if during the pendency of proceedings under sub-section (5) if anybody appears before the incharge of the check-post or the officer empowered under sub-section (3) and prays for being impleaded as a party to the case on the ground of involvement of his interest therein, the said incahrge or the officer on being satisfied may permit him to be impleaded as a party to the case and thereafter, as per sub-section (6) all the provisions of Section 78 applies mutatis mutandis upon the party, who applied for being impleaded as party. In view of the above reason, once the applicant himself admitted involvement of his interest in the proceedings then Section 78, as a whole, applies as per the specific provision of sub-section (6) of Section 78 of the Act of 994, which means that penalty can be imposed against the said person under sub-section (5) of Section 78 of the Act of 1994. In view of the above, according to learned counsel for the petitioner, the order of the Dy. Commissioner (Appeals) dated 10.1.2005 and the order

passed by the Tax Board, Ajmer dated 23rd March,2007 suffer from error of law.

I considered the submissions of learned counsel for the petitioner.

As per unamended sub-section (5) of Section 78 of the Act of 1994, admittedly, the owner of the vehicle could not have been proceeded for imposition of penalty on account of violation of clause (a) of sub-section (2) or for submission of false or forced documents or declaration which the driver or person incharge of vehicle or carrier is required to carry with his and bound to produce. Sub-section (6) of Section 78 allows the concerned authorities to implead any person as party to the proceedings on such person's prayer for being impleaded as party in the proceedings under sub-section (5) of Section 78. Sub-section (6) further provides that in case such person is impleaded as party in the proceedings under sub-section (5) then “all the provisions of this section shall mutatis mutandis apply to him.” Sub-section (6) is a procedural law prescribed procedure, which allows any person claiming his interest involved in the proceedings in sub-section (5) obviously for the goods, which were in movement within the territory of State of Rajasthan and are

subject matter in the proceedings for imposition of penalty on account of his goods in possession of any other person or were in movement in violation of provisions of clause (a) of sub-section (2) of Section 78 or for submission of false and forged documents or declaration then because of his such interest, the interested persons can get opportunity of hearing and for that purpose, the procedure of law will be same as provided for imposition of penalty “against the persons covered under sub-section (5)”. The procedural law as enacted in sub-section (6), cannot make the person liable for the penalty merely because one by his own choice became party to the proceedings under sub-section (5). The imposition of penalty is a serious matter and penalty can be imposed only upon the person who can incur the penalty by specific provision of law and not by implication. The penalty cannot be because of the reason of one's interest in the property when law says that penalty can be only upon the persons who are found in possession or who were carrying the goods in violation of the provision of clause (a) of sub-section (2) or for submission of false or forged documents or declaration. Since no penalty could have been imposed against the owner of the goods as per law at relevant time,therefore, sub-section (5) of the Act of 1994 was amended and owner of the goods

has been included in sub-section (5) as a person against whom the penalty can be imposed. Other reason for not accepting the arguments of revenue is that if sub-section (6) of Section 78 is interpreted as submitted by learned counsel for the revenue then it will result into an anomalous situation and that will be that a person if seeks permission to address to the concerned authority because of his ownership of the goods then he may be liable for the penalty imposed under sub-section (5) of Section 78 and a person who is owner of goods and is knowing well that the person covered under sub-section (5) has violated the provisions of the Act of 1994 then he can avoid imposition of penalty upon himself by not taking part in the proceedings under Section 78(5) of the Act of 1994 and the concerned officer and authority cannot proceed against that owner of goods or the person having interest in the goods as sub-section (6) is not providing that the assessing authority can implead any person interested in the goods involved in the proceedings under sub-section (5) of Section 78 unless said person himself applies. There cannot be any lawful justification for imposition of penalty when law does not make such person liable for penalty specifically.

In view of the above reasons, I do not find any merit in the submission advanced by learned counsel

for the petitioner.

Hence, both the revision petitions are dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-